

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MATTHEW R. RUTH,

NO. C15-533-TSZ-JPD

Petitioner,

V.

PATRICK GLEBE,

ORDER REQUESTING
SUPPLEMENTAL BRIEFING

Respondent.

Petitioner is proceeding *pro se* in this 28 U.S.C. § 2254 habeas action, in which he presents seven grounds for relief. *See* Dkt. 4 at 3-4. Respondent concedes that petitioner exhausted some of his claims, asserts that he failed to exhaust others, and briefs the merits of only those claims respondent deemed exhausted. *See* Dkt. 22 at 20. Petitioner contends that he fully exhausted all of his federal habeas claims. Dkt. 40 at 8-9.

The Court's initial review of this action shows that petitioner exhausted some of the claims respondent deemed unexhausted. Accordingly, the merits of these claims have not been briefed by the parties. The Court thus ORDERS:

(1) On or before **July 1, 2016**, respondent shall file a supplemental brief that address the merits of the following grounds for relief:

1 • Ground 2(b): Petitioner's confrontation and fair trial rights were violated
2 when he was unable to cross-examine his girlfriend, Ms. Woerner, because
3 the prosecutor decided not to call her as a witness following an in-chambers
4 conference.¹

5 • Ground 3: Petitioner's right to counsel was violated when the defense was
6 denied an opportunity to participate in formulating the response to the jury
7 inquiry about Ms. Woerner's pretrial police statement.

8 • Ground 6: Petitioner's constitutional right to be present was violated when
9 he was not permitted to be present for the in-chambers conference
10 pertaining to Ms. Woerner and her testimony.

11 (2) On or before **July 8, 2016**, petitioner may file a supplemental traverse.

12 (3) The Clerk shall RE-NOTE respondent's answer, Dkt. 22, for July 8, 2016. The

13 Clerk shall also send copies of this Order to the parties and to the Honorable Thomas S. Zilly.

14 DATED this 14th day of June, 2016.



15 _____
16 JAMES P. DONOHUE
17 Chief United States Magistrate Judge

18

19

20

21 ¹ Although petitioner's second ground for relief is somewhat difficult to understand, it
22 appears he is arguing that (a) the trial judge violated his right to a public trial when the judge
23 held an in-chambers conference to discuss whether Ms. Woerner would be called as a witness,
24 and (b) petitioner's subsequent inability to cross-examine Ms. Woerner violated his
confrontation and fair trial rights. Dkt. 4 at 23-24, 25, 29-33. Sub-claim (a) is unexhausted.
Respondent interprets petitioner's second ground for relief differently: "Ruth appears to allege
that under the Ninth Circuit *Juan* precedent the trial court's responding to the jury question
about Woerner's statement violated his constitutional rights." Dkt. 22 at 20.